

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS SUBCOMMITTEE ON DISTRICT COURT FUNDING

Call to Order: By **SEN. JOHN ESP**, on March 25, 2003 at 5:00 P.M.,
in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. John Esp, Chairman (R)
Sen. Edward Butcher (R)
Sen. Dan McGee, Vice-Chairman (R)
Sen. Linda Nelson (D)
Sen. Jerry O'Neil (R)
Sen. Joseph (Joe) Tropila (D)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Lynn Zanto, Legislative Services
Valencia Lane, Legislative Services

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 134, 1/10/2003

Discussion:

CHAIRMAN JOHN ESP, SD 13, Big Timber, they would discuss **SB 218** and additional amendments.

Valencia Lane, Legislative Services, said she was working on amendments to the gray bill. **EXHIBIT(fcs63b01)** She wondered what they wanted to do about the language on page 3, lines 26-27.

SEN. MIKE WHEAT, SD 14, Bozeman said "the commission shall develop minimum standards which all trial and appellate public defenders, including locally appointed private counsel, shall conform and submit these standards to the Supreme Court for review and adoption."

Chief Justice Karla Gray, Supreme Court, asked if the Supreme Court would be bound to adopt whatever comes before them from the commission.

SEN. WHEAT advised the commission would develop these standards and they would be submitted to the Supreme Court for review in hope of adoption in some form or fashion.

Ms. Lane said page 9 of the gray bill, subsection (j), discusses preparing an annual report to all the entities. She said it would be revised to say "provide a report to the Legislature as provided in section 5-11-210 regarding the operation and administration of the public defender system and a copy of the report must be provided to the commission." A new section would also be added, which will not be codified, in new section 18 that says "interim report. During the 2005 biennium the Chief Public Defender shall make quarterly reports on the operation and administration of the public defender commission to the Commission, the Governor, **The Law and Justice Interim Committee** and the **Supreme Court.**" On page 9, it will require a report to the legislature in September before the session. On page 12, new section 13, the name was changed and it would be called "The District Court Assumption and Indigent Defense Contingent Expense Account." She was not only going to include the **Supreme Court Administrator** but the **Department of Administration** so they can make requests for use of the contingency fund. There were two other amendments that she had not finalized; one is the effective dates. Some sections are effective July 1, 2003 and others not until 2004. She felt the only one that needed to be delayed to 2004 was the transition of county employees to state employees and that most of the other sections should be effective 2003. On the last page of the gray bill section 20 says the effective date will be July 1, 2004 except subsection (2). After looking at it, almost all of the sections should be effective July 1, 2003, except for the transition of county employees, which should be delayed until 2004. There was also discussion about the payment of accumulated sick and vacation leave and that it should be costed out at 20 to 25 percent of actual and transferred from the county to the state. She said she did not have that amendment.

CHAIRMAN ESP read an amendment to Section 14 regarding the litigation. **EXHIBIT(fcs63b02)** He said he would offer that amendment in **Finance and Claims.**

SEN. WHEAT said they needed to also put some sort of revenue amendment in the bill. HB 18 deals with a surcharge on all filings in civil actions that the court now relies on to for funding for information technology. He would like to put that same sort of surcharge on all of these filings and have it dumped into the contingency fund for the **Supreme Court** and Indigent Defense.

Ms. Lane said it would be an equal, but separate surcharge and wouldn't have anything to do with the IT surcharge. It would be drafted similar to the IT surcharge and would be solely for meeting transmittal deadlines.

Motion/Vote: **SEN. WHEAT** moved to adopt the amendments that were explained by **Valencia Lane** and the conceptual amendment dealing with revenue of a \$1 surcharge per filing for SB 218. Motion carried unanimously 7-0.

{Tape: 1; Side: A; Counter: 15.7}

Discussion:

CHAIRMAN ESP said he would like to go over the proposed gray bill that was handed out by **Justice Gray**. **EXHIBIT(fcs63b03)** SB 134 suggested sending the responsibility of the expenses back to the counties, etc. In the gray bill the responsibilities of payment were divided three ways, one is in the cost that they will pay directly, one in cost they won't pay and lastly the counties will pay with the state reimbursing fully. He said they discussed trying to come up with a mechanism in which they would pay all of the bills regarding district court without involving the counties, etc.

SEN DAN MCGEE, SD 11, Laurel, said **SB 134** and what they will call the Gray, gray bill run parallel and any amendments that they want to do should be done in **SB 134** as the vehicle bill for the changes.

CHAIRMAN ESP advised if **SB 218** passes then all of the language in **SB 134** that deals with indigent defense will no longer be applicable. The policy decision if **SB 218** doesn't pass is will those expenses be reimbursed by the **Supreme Court** or the **Department of Administration**, etc. If **SB 218** passes then the only costs that are reimbursable are jury and witness fees and other miscellaneous costs that would amount to about \$1.5M per year.

SEN. MCGEE recommended they go through the bill section by section. Section one, in both bills, is identical. He read Section 2, subsection (3) of **SB 134** and the coordinating section in the Gray, gray bill.

Motion/Vote: **SEN. MCGEE** moved to amend SB 134, section 2, to be the language of the Gray, gray bill, which is "paid by the county and reimbursed by the state." Motion carried unanimously 7-0.

{Tape: 1; Side: A; Counter: 27.1}

Discussion:

SEN. MCGEE remarked in section 3 there is no 3-5-602 in **SB 134**.

CHAIRMAN ESP advised the changes in this section are the expenses for a court reporter that has to travel from the county where they reside to the county where they work is a reimbursable expense. The county will pay this expense and then the state would reimburse.

Motion: **SEN. MCGEE** moved to amend SB 134, on line 25, page 2, to include section 3 of the Gray, gray bill.

Discussion:

SEN. WHEAT asked if they were adopting this whole section.

SEN. MCGEE said yes.

CHAIRMAN ESP asked how an independent contractor who is a court reporter is paid currently.

Lisa Smith, Administrative Director, Supreme Court, said court reporters that are independent contractors are paid directly.

CHAIRMAN ESP asked how are they billed.

Ms. Smith said it varies. They have an individual contract on file with each one and the contract specifies how they will be paid.

CHAIRMAN ESP asked if those contracts covered travel expenses.

Ms. Smith said she didn't know for sure and would have to go back and look.

SEN. MCGEE advised they had a bill dealing with that in **Senate Judiciary**.

Chief Justice Karla Gray advised it was SB 18, 19 or 20 and she did not feel that any of those bills made this change. Of all the court reporters in the state, there are only two or three independent contractors. The county is paying them and then the Supreme Court is reimbursing. They need to know which county is going to pay the travel. This is intended to be a clarifying amendment.

{Tape: 1; Side: B; Counter: 3.0}

Vote: Motion carried unanimously 7-0.

Discussion:

SEN. MCGEE said the next section that is being amended is 3-5-604. In **SB 134** this section was being paid by the county and in the Gray, gray bill it is paid for by the county and reimbursed by the state. He read 3(a) and 3(b) of the bill regarding transcripts. The question is whether they want additional language on lines 7-9.

Motion/Vote: SEN. MCGEE moved to amend SB 134 to have the phrases "paid for by the county and reimbursed by the state" under subsection 3(a) after the words "paid by" as provided for in 3-5-901 and the same amendment inserted on line 15 at the end of subsection (5). Motion carried unanimously 7-0.

Discussion:

SEN. MCGEE said in section 3-5-901 there are a lot of proposed changes between the two bills. On page 4 of the Gray, gray bill there is a lot of stricken language that has been moved to other sections. The beginning part of 901 is subsection (2) and will declare what the state is going to pay for. He said there is a laundry list at the bottom of page 3 and goes to the top of page 4 of the Gray, gray bill. All of the stricken language is going to be moved and reinserted on page 6 of the gray bill. The bottom of page 5 and 6 deals with several miscellaneous costs including: indigent defense and civil jury trials. He said he would like to segregate the expenses from the counties to the state and would like to get the counties out of the picture as much as possible. There are a few things such as jury fees that the county will be responsible for, but the counties would still be reimbursed by the state.

CHAIRMAN ESP advised in the Gray, gray bill on page 4 there is a (c) and (d) that involves habeas corpus proceedings and wondered how they are paid for now.

Mary Phippen, Association of Clerks of Court, said under current law they were reimbursed by the court administrator's office. She did not see in the gray bill where they were added in anywhere else for reimbursement from the state.

Gordon Morris, Montana Association of Counties, referred to section 3 of **SB 218** and stated this is current law; those are current costs assumed by the state.

CHAIRMAN ESP said in subsection 3, on page 5 of the Gray, gray bill the appellate defender language is rewritten somewhat but still has the same intent.

{Tape: 1; Side: B; Counter: 15.8}

SEN. MCGEE said amendment #4 would deal only with subsection 4 on page 5 of the Gray, gray bill. The language in subsection 4 through the end of that section on page 6 will include underlined and not underlined language and that language will go into 3-5-901. In **SB 134**, page 5, sub-section 4, line 12 the language begins the same as in the Gray, gray bill.

Motion: **SEN. MCGEE** moved to amend subsection 4 to look like the the Gray, gray bill.

SEN. MCGEE explained on line 13, page 5, of **SB 134** he would like to add after the words "reimburse counties," "within 30 days of submittal of the claim."

Discussion:

SEN. WHEAT asked if this amendment would strike little(i) and (b) in **SB 134** or are they included.

SEN. MCGEE said that language is already talked about in the Gray, gray amendment. If they strike everything in lines 14-21 as they currently read in **SB 134** and insert the language it will reinsert that very same language.

CHAIRMAN ESP asked if it would be easier to deal with the whole section in the Gray, gray bill and replace that section in **SB 134** with language from the Gray, gray bill.

Ms. Lane said the 4th amendment is how 3-5-901 is going to appear

in the amended bill and she wondered if they wanted to use the **SB 134** version.

SEN. MCGEE said no, they want to use the Gray, gray bill version and work within 901.

CHAIRMAN ESP suggested including in the amendment moving the stricken language in (c) and (d) on page 4 of the Gray, gray bill into the language on page 6.

SEN. MCGEE said from page 4 of the Gray, gray bill that language would be included into an appropriate subsection on line 12 of page 6 in **SB 134**.

CHAIRMAN ESP said no, he would like that language moved to page 6 in the Gray, gray bill. He felt it was inadvertently left out of the things that needed to be paid for by the counties and reimbursed by the state.

SEN. MCGEE said they would un-strike the language of c, d, 1,2,3 and move it over to page 6 of the Gray, gray bill as an item that will be reimbursed.

Ms. Lane said amendment #4 would be how 3-5-901 would look and use the Gray, gray bill version with a 30 day submittal and move c, d, 1,2,3 to page 6 of the gray bill and insert where appropriate.

SEN. MCGEE said yes that is his motion for the amendment.

CHAIRMAN ESP said up until now on page 6, subsection (c) the district court expenses associated with civil jury trials were not reimbursable under the old program up until July of this year. There is a policy decision in the bill that they will bring expenses to the state level that were formally county expenses.

SEN. MCGEE said if they would write in the margin of the Gray, gray bill on page 6 adjacent to subsection (c), HB 489 was heard in Judiciary and it deals with civil jury trials. He favors that bill and **Ms. Lane** could draft coordination language that would make subsection (c) the same and HB 489 would supercede. They would need coordination language in HB 489 with that subsection (c). HB 489 language cleans this up.

Ms. Lane felt it could be done without coordination language by making subsection (c) the same as subsection (h) in HB 489.

Justice Gray said she testified in support of HB 489, but there is no funding provided anywhere for the increase in those costs

in the coming biennium.

SEN. MCGEE asked if the cost was \$167,000.

Justice Gray said it was \$147,000 per year and it is important that it gets funded.

{Tape: 2; Side: A}

Ms. Phippen said there were revenue estimates for those 29 counties that had civil jury trials in fiscal years 1998-99. She said the \$147,000 was the estimate for the 27 counties that were not included in that. There is a funding mechanism from the fees that have been sent to the state under HB 124, from the previous session, to cover some of those expenses.

SEN. MCGEE asked if the total was about \$310,000 for all fifty-six counties.

Ms. Phippen advised it could be.

SEN. MCGEE asked if there was a number in there for 1998-99.

Ms. Phippen said she didn't think so.

SEN. MCGEE said they might have to re-refer **HB 489** to Finance and Claims.

Vote: Motion carried unanimously 5-0.

Discussion:

SEN. MCGEE said in section 6, page 6 of the Gray, gray bill there is an amendment to 3-5-902 for fiscal administration for payment of court expenses and the language that needs to be included is "and reimbursement."

Motion/Vote: SEN. MCGEE moved to amend into SB 134 section 6 of the Gray, gray bill amending 3-5-902 to be inserted on page 5, line 22 of SB 134. Motion carried unanimously 6-0.

{Tape: 2; Side: A; Counter: 4.4}

Discussion:

CHAIRMAN ESP asked if **SB 218** passes will **SB 134** coordinate and remove the things that need to be removed for indigent defense or do they need a motion to coordinate.

Motion/Vote: SEN. MCGEE moved a conceptual amendment that if SB 218 passes, it would supercede anything else that they are amending in SB 134 concerning appellate and indigent defense or the Public Defender System. If SB 218 fails then the provision for the Public Defender System will remain as amended in revised SB 134. Motion carried unanimously 6-0.

Discussion:

CHAIRMAN ESP discussed section 6 of the Gray, gray bill. In **SB 218** they talked about reporting quarterly to the interim committees, etc. and wondered if this be an appropriate place to address the recording requirements to those groups, etc.

SEN. MCGEE asked what section of code were they dealing with in **SB 218**.

Ms. Lane said there is a new section, which creates the Chief Public Defender, but she wondered what they wanted in 3-5-902.

CHAIRMAN ESP read section 902 and said this would be a good place to include this language.

SEN. MCGEE said they could take that language from **SB 218** and include it on the end of this section.

Ms. Lane asked if they wanted to put in requirements that the Supreme Court would have to make reports during the next interim. They would not want to codify that in the existing section of law, they would just want a separate non-codified section. There are certain requirements that the district court council already has to report.

Lynn Zanto, Legislative Services, said during the last biennium whenever there the Branch was requested to report to the **Legislative Finance Committee**, they did. She did not feel there was any specific language in SB 176 that required them to do that.

Ms. Lane recommended that they should not include this language.

SEN. MCGEE said the next section deals with the duties of the clerk as to jurors in section 3-15-204. They need to make some policy issues about amending section 3-15-204.

Ms. Lane said **SB 134** contains an amendment on page 5, to 7-6-2511 that does not appear in the Gray, gray bill and she wondered if it would come out of **SB 134**.

SEN. MCGEE said no, it would stay there. The Gray, gray bill is ideas from the Supreme Court and it is the job of the committee to make policy decisions they feel are necessary. The question is do they wish to include the warrant must be paid by the county and reimbursed by the state for jurors.

SEN. WHEAT said if they are going to be consistent then it should be included.

Motion/Vote: **SEN. MCGEE** moved amendment #6 for SB 134, page 5, line 22, to insert the Gray, gray bill amendments to 3-15-204. Motion carried unanimously 6-0.

Discussion:

SEN. MCGEE said the next section is section 8 in the Gray, gray bill. On page 7 of the Gray, gray bill Section 8 amends 7-6-2426 and is the enumeration of county charges. He read this section and said this was the only amendment to that section.

Mr. Morris said he has no problem with the language.

Motion: **SEN. MCGEE** moved amendment #7 for SB 134, page 5, line 22 to insert the Gray, gray bill amendments to 7-6-2426.

Discussion:

CHAIRMAN ESP wanted to remind the committee that some of these expenses might be listed in other sections.

SEN. MCGEE said perhaps they should leave it up to **Ms. Lane** to craft this section properly.

Ms. Lane advised the changes to 3-5-901 are going to say "indigent defense" and it will be under title 3.

SEN. JERRY O'NEIL asked if it was this or any other title.

SEN. MCGEE said for right now they would leave it as this or any other title for now and when **Ms. Lane** gets into it, if it just refers to title 3 it will be title three and if it is a plethora it will be a plethora.

Vote: Motion carried unanimously 7-0.

Discussion:

SEN. MCGEE said in **SB 134**, page 5, section 5, they are amending

7-6-2511, county levy for certain court expenses, and this is not discussed in the Gray, gray bill. He read this section. He did not think that they needed a motion for this language to remain in the bill but suggested it should stay intact in **SB 134**. He said the next item is on page 6 of **SB 134**, which is identical to page 8 of the Gray, gray bill and amends 40-4-215. The significant language change begins on lines 23-25 of **SB 134** and he read this language that had been stricken. In the Gray, gray bill it is not stricken and remains the duty of the state. He read the next underlined language in **SB 134** and said he didn't know where to go from there.

Mr. Morris said suggested going with section 9 of the Gray, gray bill and replacing section 6 in **SB 134**.

Motion/Vote: SEN. MCGEE moved amendment #8 to amend SB 134, page 6 to strike all the amendments of 40-4-215 and take the proposed language of the Gray, gray bill amending 40-4-215. Motion carried unanimously 7-0.

{Tape: 2; Side: A; Counter: 23.6}

Motion: SEN. MCGEE moved Amendment #9 to amend SB 134, page 7, 40-4-226 with the language from the Gray, gray bill.

SEN. MCGEE said in **SB 134** the cost was not going to be paid for by the state and the amendment says it will be paid for by the county and reimbursed by the state.

CHAIRMAN ESP asked what those costs were.

SEN. O'NEIL advised in Flathead Co. the parties that attend have to pay something toward that. There is nothing in here where the parties have any responsibilities.

SEN. MCGEE said they are amending current law and he also remembered something along the same lines.

SEN. O'NEIL said they could put that in later.

Vote: Motion carried unanimously 7-0.

Motion/Vote: SEN. MCGEE moved Amendment #10 to amend SB 134, page 8, section 46-8-201, which is new section 12 with the language from the Gray, gray bill and make it the responsibility of the state to reimburse. Motion carried unanimously 7-0.

Motion: SEN. MCGEE moved Amendment #11 to amend SB 134, page 8,

section 46-8-202 with the same section of law in the Gray, gray bill.

SEN. TROPILA advised the enumeration of appointed counsel in the Gray, gray bill is 46-8-202 and in **SB 134** it is section 46-8-201.

CHAIRMAN ESP clarified there is a typo in the Gray, gray bill and they are on 46-8-202.

Motion: **SEN. MCGEE** moved Amendment #11 to amend SB 134, page 8, code section 46-8-202 to read as to the Gray, gray bill same section. **Vote:** Motion carried unanimously 7-0.

Motion: **SEN. MCGEE** moved Amendment #12 to amend SB 134, page 8, New Section 14 code 46-11-319 with the same section of law in the Gray, gray bill.

{Tape: 2; Side: B}

CHAIRMAN ESP said in SB 134 it talks about jury and witness fees as a county expense. He wondered if they would be paid by the county and reimbursed by the state.

SEN. MCGEE said that was correct.

Vote: Motion carried unanimously 7-0.

Discussion:

SEN. MCGEE read the Gray, gray bill, page 12, subsection 4 of the amended section 14.

Mr. Morris said with the intended motion, his problem is they are putting the cost, which in current law is assumed by the state, for examinations at the request of the prosecution back to the counties.

Chief Justice Gray said the reason for this amendment is that prosecution function costs, just as indigent defense costs, do not belong in the court state assumption. They ought not to be paying either side's costs. If the county attorney wants a transcript, that is their cost; it isn't the court's cost.

SEN. WHEAT said subsection 4 is dealing with indigent defense, which the state is responsible to pay and if the indigent defendant's counsel requests an examination that is a state expense. If it is a prosecution request for an examination that is not a state expense, it is a county expense or an expense of

the state Attorney General.

SEN. MCGEE asked what motion they need to make.

SEN. WHEAT advised they need to use the language in the Gray, gray bill.

{Tape: 2; Side: B; Counter: 5.5}

Ms. Phippen stated prior to state assumption of the district courts, those expenses were paid by the county and submitted to the court administrator's office for reimbursement.

Chief Justice Gray said believed if it was a court ordered examination it was paid for. This may be an inappropriate amendment to this statute.

SEN. MCGEE asked if the language should remain as it is in SB 134.

Motion/Vote: **SEN. WHEAT** moved Amendment #13 to adopt the section in the GRAY, gray bill, 46-14-202, sub-section 4, and the stricken language. Motion carried unanimously 7-0.

Motion/Vote: **SEN. MCGEE** moved Amendment #14 to amend SB 134, page 9, line 27, section 46-14-221 and insert the language from the Gray, gray bill. Motion carried unanimously 7-0.

Motion/Vote: **SEN. MCGEE** moved Amendment #15 to amend SB 134 amending code 46-15-116 using the Gray, gray bill language. Motion carried unanimously 7-0.

{Tape: 2; Side: B; Counter: 15.1}

Discussion:

SEN. MCGEE said in new section 14 there is no motion necessary. He was not clear on the Gray, gray bill page 16, which discusses effective dates.

Ms. Lane said they need to look at **SB 134**, page 12, which is section 15.

SEN. MCGEE asked if they could strike that section.

Ms. Lane advised it would terminate section 62 of **SB 176**.

CHAIRMAN ESP read section 62 of **SB 176**.

Ms. Lane advised the amendment in **SB 134** did not touch section 62; it struck the bracketed language in 3-5-901, subsection 3 and 4. She didn't know whether they needed it or not. On page 12 of **SB 134**, there is a section 15 and new section 16 that do not appear in the Gray, gray bill and they need to address whether it should stay in **SB 134** or not.

Chief Justice Gray referred to section 15 of **SB 134**. The bracketed portion about section 62 should remain in there as will terminating on June 30 of this year. Section 62 was a mandate to the **District Court Council** to come with a bill for this session, which was **SB 20** which was re-referred to **Senate Finance and Claims** pending a cleanup of issues by the subcommittee.

Ms. Lane said section 15 in **SB 134** would have amended section 65, which is the termination section of **SB 176** and it would not have done anything to section 62. She said whether this bill comes with this amendment or not, section 62 will not be touched. Section 15 of **SB 134** eliminates the sunset of the bracketed language of 3-5-901. The question becomes do they want to keep section 15 in **SB 134** or not.

{Tape: 2; Side: B; Counter: 22.8}

Chief Justice Gray commented the bracketed language, which is stricken, was the sunset on the fallback to the counties for fiscal year 2003 only. That sunset on the fallback to the counties needs to be left there to terminate June 30.

Ms. Lane said on page 5, **SB 134**, the language that they are talking about is lines 8-11 and 19-21. She wanted to know is if they want those sections to terminate on June 30, 2003.

Chief Justice Gray said yes.

Ms. Lane said then they need to strike section 15, page 12, of **SB 134**.

Motion: SEN. MCGEE moved amendment #16 to amend **SB 134**, page 12, lines 21-23, Section 15 to be struck in its entirety.

Ms. Lane said if they strike section 15 the sunset will happen on June 30.

Vote: Motion carried unanimously 7-0.

SEN. MCGEE said the next question that he had was lines 25-26, page 12 of **SB 134**.

Ms. Lane said she suspected everyone would want that language to be stricken.

Motion/Vote: SEN. MCGEE moved amendment #17, page 12, lines 25-26 of SB 134 to be struck in its entirety. Motion carried unanimously 7-0.

Motion/Vote: SEN. MCGEE moved to grant authority to Ms. Lane to make the appropriate amendments on the effective dates and the retroactive applicability dates and coordination instructions as necessary. Motion carried unanimously 7-0.

SEN. MCGEE advised at the next meeting they would have a gray bill of **SB 134** to discuss.

Justice Gray requested a copy for herself and the others before the meeting.

ADJOURNMENT

Adjournment: 7:02 P.M.

SEN. JOHN ESP, Chairman

PRUDENCE GILDROY, Secretary

JE/PG

EXHIBIT (fcs63bad)